IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition No. 2947 of 1998

Dhondiba Somaji Kale)
Age about 65 years, Occ.)
Agriculturist At and post)
Bori Khurd (Salwadi),)
Taluka Junnar, Dist. Pune) ..Petitioner

vs.

1.The State of Maharashtra)

2.Special Land Acquisition)
Officer No.22, Pune)
Collector Office Compound)
Pune 1)

3.District Resettlement)
Officer, Pune Collector)
Office, Pune)

4. Bhaga Somaji Kale)
since deceased through)
his legal heir)
Shri Uttam Bhaga Kale)

5. Shri Ramchandra Somaji)
Kale)

6. Shri Vishnu Somaji Kale)
Respondent nos. 4 to 6)
residing at and post Bori)
Khurd (Salvadi), Taluka)
Junnar, District Pune) ..Respondents

Shri S.V.Pitre for petitioners.
Shri V.S.Gokhale, A.G.P. for respondent nos.1 to 3

CORAM: S.B.MHASE &
S.R.DONGAONKAR. JJ.
28th February, 2006

ORAL JUDGMENT: (Per S.B.Mhase J.)

1. Heard.

2. In this petition acquisition of the petitioner's land for resettlement of project displaced persons is under challenge. Award has already been passed and possession of the land has been taken by the Government and to that effect a statement has been made in the affidavit. Shri Pitre, learned counsel for the petitioner, tried to submit that physical possession of the land is not taken. However, in cases where the Government takes possession of the land there is no one to physically maintain such possessison and the person whose land is acquired may cultivate the land. Such subsequent possession is of trespasser's possession and not the lawful possession.

3. The petition does not survive for our consideration in view of the judgment of the Supreme Court in the case of **Municipal Council, Ahmednagar Vs. Shah Hyder Beig reported in AIR 2000 S.C.671**. In the said case the Apex Court has observed in para 17 as under:

> "In any event, after the award is passed no writ petition can be filed challenging the acquisition notice or against any proceedings

thereunder. This has been the consistent view taken by this Court and in one of recent cases (C.Padma V.Dy.Secretary to the Govt. of T.N. reported in (1997)2 SCC 627...."

In view of the aforesaid judgment of the Supreme Court challenge in the petition does not survive. Petition is dismissed. Rule discharged. No order as to costs.

(S.R.DONGAONKAR J.) **(S.B.MHASE J.)**